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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 72-1711

McARTHUR BASSETT,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To Alabama Supreme Court

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To Alabama Supreme Court

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States of America

McArthur Bassett (hereinafter "Petitioner") prays that a writ of certiorari be issued to the Supreme Court of Alabama to review a decision of that Court, reversing a decision of the Alabama Court of Criminal Appeals and ordering the reinstatement of the Petitioner's conviction in the Circuit Court of Coffee County, Alabama.

OPINIONS BELOW

The opinion of the Supreme Court of Alabama is reported at 275 So. 2d 720 and is printed as Appendix A to this Petition. The opinion of the Alabama Court of Criminal Appeals is reported at 275 So. 2d 713 and is printed as Appendix C to this Petition.

The order of execution of judgment, entered by the Alabama Court of Criminal Appeals on March 20, 1973, is reported at 275 So. 2d 724 and is printed as Appendix D to this Petition.

JURISDICTION

The jurisdiction of this Court is invoked under 28 **U.S.C.** § 1257(3).

LAWS INVOLVED

This case involves the Fourth and Fourteenth Amendments to the Constitution of the United States.

QUESTION PRESENTED

Whether the Fourth and Fourteenth Amendments will permit a conviction based on evidence which was seized during the search of Petitioner's automobile under the following circumstances:

1. The automobile was thoroughly searched on the highway where it was originally stopped.

2. Neither Petitioner's automobile nor its contents were seized at this juncture.

3. With Petitioner's consent, a police officer drove his automobile to the police station.

4. At the police station, some two hours after Petitioner's automobile was stopped, it was subjected to a **second** search during which the evidence in question was seized.

5. The second search was conducted pursuant to an **illegal** warrant.

6. At the time of the second search, Petitioner was securely in jail.[1]

STATEMENT OF THE CASE

Petitioner was convicted in the Circuit Court of Coffee County, Alabama, for transporting or possessing lysergic acid diethylaminde (hereinafter "LSD") and sentenced to a term of eight years in the penitentiary.

The following chronology of events preceded the seizure of the LSD which gave rise to Petitioner's conviction. On the night of July 16, 1970, while on a trip which carried them through Alabama, Petitioner and a companion were traveling in Petitioner's car on the highway in Enterprise, Alabama, which is a short distance from Dothan, where an armed robbery had occurred earlier in the evening. Shortly after midnight, Petitioner's car was stopped by the Enter-

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[1] There was also a substantial "probable cause" issue in this case. When this case was before Alabama Court of Criminal Appeals, Judge Cates noted, in a concurring opinion, that he would reverse Petitioner's conviction because there was a lack of "probable cause". App. C, p. A-17, 275 So. 2d at 720. The Court of Criminal Appeals decided the "probable cause" issue against the Petitioner, but decided the case for him on the basis of the issue now presented by this petition. The "probable cause" issue never reached the Alabama Supreme Court, because the State of Alabama naturally did not raise this issue on appeal and the attorney representing the Petitioner at that time did not file a cross-appeal on this issue. When this case was before the Alabama Supreme Court, Justice Jones noted his opinion that there was a lack of "probable cause", although this issue was not before the Court. App. A, p. A-5, 275 So. 2d at 723. The issue of "probable cause" is not raised in this Petition solely because we assume that we cannot raise any issue now which was not properly brought to the attention of the Alabama Supreme Court.

prise City Police who (according to the Alabama Criminal Court of Appeals and the Alabama Supreme Court) had "probable cause" for thinking that Petitioner and his companion answered the description of the men who had committed the Dothan robbery. On the highway where Petitioner was stopped, the police conducted a thorough search of his car, including the glove compartment, the console between the bucket seats, and the trunk. Although the officers found no weapons, they found "quite a bit of money" on Petitioner's person and observed in the car plastic bags containing yellow tablets and a substance suspected of being marijuana. At this time, the Petitioner and his companion were **not** arrested; and no seizure was made of the Petitioner's car or any of its contents (App. C, p. A-8, A-9, 275 So. 2d at 715, 716). The Petitioner and his companion voluntarily agreed to go in a police car to the Enterprise Police Station to await the arrival of the Dothan robbery victim who would identify them. Petitioner's car was driven to the police station by a policeman. Although no charges had been placed against Petitioner and his companion at this time, they were placed in a cell, at their own request, so they could get some rest (App. C, p. A-8, 275 So. 2d at 715, 716). At about 3:00 A.M., while Petitioner and his companion were resting in a cell, Petitioner's car was searched for a **second time**, but this time pursuant to **a search warrant which the state later admitted was defective**[2] (App. C, p. A-8, 275 So. 2d at 716). During the course of this second search, a policeman and a state narcotics agent uncovered and seized the LSD on which Petitioner's conviction was based. A short time later, the Dothan robbery victim arrived and concluded that Petitioner and his companion were not the robbers. Thereafter, Petitioner was arrested on the drug charges in question.

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[2] The record does not show why this warrant was defective and since Petitioner was not represented by his present attorneys in the proceedings below, we do not have any personal knowledge of why the warrant was deemed defective.

Prior to his conviction, Petitioner's attorney filed timely motions to suppress the evidence and to quash the indictment (App. C, p. A-9, 275 So. 2d at 715), thereby raising the issue now presented to this Court in this Petition for Certiorari. After hearing, these motions were denied and Petitioner was convicted at a trial at which the LSD in question was admitted into evidence.

Petitioner's conviction was reversed by the Alabama Court of Criminal Appeals on the ground that the LSD in question was not admissible evidence since it had been uncovered and seized, without a valid search warrant, during the course of a search of Petitioner's automobile made at a **time**, i.e., several hours after Petitioner had voluntarily submitted to the custody of the police, and at a **place**, i.e., the police station, when "exigent circumstances" had long since passed. The Alabama Court of Criminal Appeals predicated its holding on **Preston v. United States**, 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964) (App. C, pp. A-16, A-17, 275 So. 2d at 719).

Subsequently, the Alabama Supreme Court reversed the Criminal Court of Appeals and ordered the reinstatement of Petitioner's conviction. In large part, the Alabama Supreme Court predicated its reversal on this Court's decision in **Chambers v. Maroney**, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970) which, in the Alabama Court's view, "presented . . . a factual situation . . . strikingly similar" to that of the case under consideration (App. A, pp. A-2, A-3, 275 So. 2d at 722). Apparently concluding that **Chambers** abolished the requirement of "exigent circumstances" for a warrantless search conducted at the police station, the Alabama Supreme Court assumed that the search was legal and, thereby, avoided a consideration of the issue raised by this Petition. Instead, the Court addressed itself to the question whether officers, when having "probable cause" to look for one kind of property, can seize property

"relating to an entirely different offense" (App. A, p. A-1, 275 So. 2d at 721).

On March 20, 1973, acting pursuant to the Alabama Supreme Court's mandate, the Criminal Court of Appeals entered a judgment affirming the trial Court's conviction of the Petitioner (App. D, p. A-19).

REASONS FOR GRANTING THE WRIT

The Petitioner seeks a Writ of Certiorari because the Alabama Supreme Court's determination of the instant case is not in accord with the prevailing decisions of this Court.

This Court has long held that, under the Fourth amendment, a search for seizure conducted **without** a valid warrant is "unreasonable" unless "the exigencies of the situation made that course imperative" **Coolidge v. New Hampshire**, 403 U.S. 443, 455, 30 L. Ed. 2d 564, 576 (1971). "Exigent circumstances" are those which demand **immediate** police action because, as in the case of an automobile which can be moved out of the jurisdiction, the opportunity for a search is "fleeting". Under such circumstances, the officer who waits to obtain a warrant engages in an exercise in futility because, when he gets around to making his search, he will find that the evidence has been destroyed or moved. In the instant case, the record makes clear that there were no such "exigent circumstances" prevailing at the time when the Enterprise Police, acting on the basis of an **illegal** warrant, seized the narcotics in question from Petitioner's automobile while it was located at the police station. For many reasons, this is simply not a case for the doctrine of "exigent circumstances".

First, the Enteprise Police did in fact **secure** a **warrant** before they conducted the search in question. This is not a case where the failure to secure a warrant can be explained away on the basis of a lack of time; rather, this

is a case where, having ample time, the police secured an **illegal** warrant. Thus, the doctrine of "exigent circumstances" is not applicable to the instant case because that doctrine, as we understand it, was never intended to excuse police from following procedures prescribed by the Constitution where, as here, time was no problem. Certainly, the Fourth Amendment contemplates that, if time permits, a policeman must secure a valid warrant. Otherwise, why have any warrant requirement at all?

Second, several hours before the search in question, the police thoroughly searched Petitioner's car on the highway at the place where it was initially stopped. At that time, the officers saw what they suspected as being illegal narcotics. They had the benefit of this suspicion when they later conducted the search at the police station and, for this reason, they were assisted in this search by a state narcotics agent. This strong suspicion, taken in conjunction with the fact that the Enterprise Police had ample time to go before a magistrate, makes even more inexcusable their failure to secure a **valid** warrant specifying the drugs which they ultimately seized. In short, the officers had "advance knowledge of the existence and location of the [narcotics in question], [they had an] intention to seize [them], and [they had] the ample opportunity for obtaining a warrant." **Coolidge v. New Hampshire**, 403 U.S. at 482, 29 L. Ed. 2d at 592. Accordingly, the police cannot plead as an "exigent circumstance" the "inconvenience of procuring a warrant to cover an **inadvertent** discovery". **Coolidge v. New Hampshire**, 403 U.S. at 470, 29 L. Ed. 2d at 585.

Third, at the time of the search at the police station, there was no danger, with the Petitioner in jail, that he could use weapons hidden in his automobile. **Preston v. United States**, *supra*. In this connection, the initial search of the automobile while it was still on the highway had revealed that it did not contain any weapons anyway.

Fourth, it was impossible for the Petitioner, who was in jail, to destroy evidence which was located in his automobile. **Preston v. United States**, *supra*.

Fifth, there was no "danger that [Petitioner's] car would be moved out of the locality of the jurisdiction," **Preston v. United States**, 376 U.S. at 368, 11 L. Ed. 2d at 781.

Hence, we see, the Alabama Court of Criminal Appeals correctly applied **Preston** to the case sub judice. However, in placing its total reliance on **Preston**, that Court failed to point out what the record in the instant case makes clear: **the Petitioner has a stronger case than the accused did in Preston.** In the instant case, there are even more reasons than there were in **Preston** militating against the application of the doctrine of "exigent circumstances".

Chambers v. Maroney, *supra*, on which the Alabama Supreme Court relied for its decision, is not apposite to the case under consideration for several reasons: (i) In the instant case, the police officers conducted their **initial** search on the highway, making clear that it was "safe" and "practicable" to conduct a search at that juncture, whereas, in **Chambers**, the officers deferred their initial search to the police station since they were dealing with **four** suspects "in a dark parking lot in the middle of the night" in a situation which made it "unsafe" or "impracticable" to remain long at the scene of arrest. **Chambers v. Maroney**, 399 U.S. at 52, 26 L. Ed. 2d at 429, f.n. 10; (ii) in the instant case, the Petitioner's automobile had **not** been seized at the time when it was searched at the police station, whereas, in **Chambers**, the arresting officers seized the suspects vehicle **at the time of arrest** on the highway, so that it could later be searched at the police station under "safer" conditions; and (iii) in the instant case, the Court is dealing with a search and seizure conducted pursuant to an illegal warrant, which the officers had ample time to secure, whereas, in **Chambers**, the Court was dealing with

the failure to obtain a warrant for the search of a vehicle which had been seized earlier when "exigent circumstances" still prevailed.

Finally, this case is important to the efficient administration of criminal justice because it affords this Court an opportunity to take another look at **Chambers** which, prior to being circumscribed by **Coolidge**, seemed to cast considerable doubt on the continuing vitality of **Preston**. **Chambers** has been the source of much confusion, which is exemplified by the divergent treatment accorded the instant case in the Alabama Courts below. This confusion has inevitably led to an increase in the workload of the lower courts, both state and federal; in this connection, **Shepard's Citations** reveals that **Chambers**, since it was decided in 1971, has been discussed in over 200 opinions in the lower appellate courts. **Chambers** has also caused much consternation among commentators who, in the course of their criticism, have taken varying positions with respect to its meaning, viz: (i) **Chambers** cannot be reconciled with **Preston** which, as a practical matter, it overruled; (ii) **Chambers** has abolished altogether the requirement of "exigent circumstances" for the warrantless searches of automobiles stopped on the highway, irrespective of when and where the search is conducted; and (iii) **Chambers** is based on "bootstrap" logic to the extent that it employs "exigent circumstances" which might have existed on the highway to justify a subsequent search at the police station long after all "exigent circumstances" are gone. See, e.g., 46 **Notre Dame Lawyer** 610 (1971); 47 **Notre Dame Lawyer** 668 (1972); and 55 **Minn. L. Rev.** 1011, 1026 (1971). Certainly, some of this criticism contains merit. Nevertheless, we do not urge this Court to consider the case *sub judice* for the purpose of overruling **Chambers**, because, **first**, we do not think it necessary for a proper disposition of the case at hand and, **second**, we are mindful of this Court's assertion in **Coolidge** that it did not intend to seek clarity

in this area of the law by the "overruling of recently decided cases". 403 U.S. at 483, 29 L. Ed 2d at 564. Rather, we urge this Court to give consideration to the instant case so that it can continue the process of refinement on **Chambers** which was commenced in **Coolidge**. There is an obvious need for **Chambers** in the factual situation, presented in that case, where the search of an automobile is deferred to the police station because conditions prevailing on the highway made it "unsafe" for officers to undertake any more than "seizure" at that time and place. By refining its language, this Court can preserve for **Chambers** its original meaning and yet make manifest that **Chambers** was never intended to reach those situations, prevailing in the instant case, where it was not "dangerous" or "impractical" to make a search on the highway; or where the automobile in question was not seized on the highway so that it could later be searched at the police station; or where the search in question was conducted pursuant to an **illegal** warrant.

CONCLUSION

Wherefore, Petitioner respectfully submits that this Court should grant the Writ of Certiorari prayed for herein.

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Certificate of Service

I hereby certify that on this date I served a copy of the foregoing Petition for Writ of Certiorari upon the Hon. William Baxley, Attorney General of the State of Alabama, by placing a copy thereof in the United States Mail, postage prepaid and properly addressed to him on this the .... day of June, 1973.

.....
Of Counsel

APPENDIX

APPENDIX "A"

Opinion of the Alabama Supreme Court

The State of Alabama—Judicial Department

The Supreme Court of Alabama

October Term 1972-73

Ex Parte: State of Alabama
ex rel. Attorney General

Petition for Writ of Certiorari to the Court of Criminal Appeals

S.C. 146 (In re: McArthur Bassett

v.

State of Alabama)

Maddox, Justice

The Court of Criminal Appeals, with one judge dissenting, reversed the conviction of McArthur Bassett for possession of illicit drugs and remanded the cause to the circuit court. On petition by the State of Alabama for certiorari, we granted the writ in order to review the opinion and judgment of the Court of Criminal Appeals, on the issue framed by that court as follows:

> "Where officers have probable cause to conduct a warrantless search not incident to an arrest, may property relating to an entirely different offense be seized, where possession of that property alone constitutes a crime?"

The Court of Criminal Appeals answered the question in the negative, apparently on the ground that since the defendant was not arrested on the drug charge at the time

of the search,[1] the search was not conducted incident to the arrest on the drug charge, and even admitting that the officers had probable cause to stop and search the vehicle in which the drugs were located in connection with a robbery investigation, they could not seize the illicit drugs which turned up in the course of this search.

After a review of the law applicable to warrantless searches of automobiles, we are of the opinion that the judgment of the Court of Criminal Appeals is due to be reversed and remanded.

The facts of this case are strikingly similar to the factual situation presented in **Chambers v. Maroney**, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970). There, Chambers was one of four men arrested after the car in which they were riding was stopped by police shortly after an armed robbery of a service station. The arrests were made upon information given by the service station attendant and bystanders. The car was taken to the police station and searched without a warrant. The search disclosed two revolvers and cards bearing the name of an attendant at another service station who had been robbed at gunpoint a week earlier.

The Supreme Court, in **Chambers v. Maroney**, supra, found that the search of the car at the station house in that case was not unreasonable, and evidence obtained in the search was permitted to be introduced at the trial. Admittedly, all the guiding principles which apply to warrantless searches of automobiles are difficult to understand. The fact that there were three separate views expressed on the issue here by the Court of Criminal Appeals seems to indicate the difficulty which Fourth Amend-

[1] A search was conducted on the streets when the car was stopped and later at the police station. A search warrant, admittedly invalid, was obtained to conduct the search at the station.

ment questions pose. But a few general principles seem to be fairly well established.

(1) Questions involving searches of motor cars or other things readily moved cannot be treated as questions arising out of searches of fixed structures like houses. **Preston v. United States**, 376 U.S. 364, 11 L. Ed. 2d 777, 84 S. Ct. 881 (1964); **Chambers v. Maroney**, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970).

(2) There is a limitation of time-place upon the justifiable warrantless search incident to an arrest which is applicable in motor vehicle situations. **Preston**, supra; **Chambers**, supra; **Coolidge v. New Hampshire**, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971).

(3) In some situations the permissible object of the search is limited to weapons or the fruits or implements of the crime which may be concealed or destroyed. Cf. **Preston**, supra; **Chimel v. California**, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969).

The Court of Criminal Appeals admits that the officers had probable cause to search the automobile for fruits of the Dothan robbery, both on the streets of Enterprise and at the police station.[2] Two members of the court decided, however, that even though the illegal drugs were discovered during this admittedly valid warrantless search, the seizure was nevertheless invalid. The other member concurred that the cause should be reversed.

The opinion of two of the judges quotes from **Harris v. United States**, 331 U.S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947), as follows:

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[2] We recognize that Judge Cates apparently does not agree that there was probable cause to conduct **any** search. We do not address ourselves to this point since it appears that a majority of the Court of Criminal Appeals thought probable cause existed to search.

> ". . . If entry upon the premises be authorized and the search which follows be valid, there is nothing in the Fourth Amendment which inhibits the seizure by law-enforcement agents of government property the possession of which is a crime, even though the officers are not aware that such property is on the premises when the search is initiated."

The two judges also cite **Abel v. United States**, 362 U.S. 217, 4 L. Ed. 2d 668, 80 S. Ct. 683 (1960), which holds that when an article subject to lawful seizure properly comes into an officer's possession in the course of a lawful search it would be entirely without reason to say that he must return it because it was not one of the things it was his business to look for.

We are aware that **Harris**, supra, has been overruled, in part, by **Chimel v. California**, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969), but we believe the statements in **Harris** are still viable to the effect that when an article subject to lawful seizure properly comes into an officer's possession in the course of a lawful search, it would be entirely without reason to say that he must return it because it was not one of the things it was his business to look for. As we read **Chimel**, it only overruled **Harris** on the permissible scope of a search incident to an arrest. **Harris** had permitted a broad area within which a search could be conducted incident to a lawsuit arrest. **Chimel** substantially restricted the "search incident to an arrest" exception to the warrant requirement. But, **Chimel**, as we view it, did not address the question of the seizure of evidence during a **valid search**, whether with or without a warrant. Consequently, we believe that **Harris**, and **Abel** are still good precedent for the proposition that there is nothing in the Fourth Amendment which would inhibit the seizure by law enforcement agents of property, the possession of which is a crime, even though the officers were not aware that such property was on the premises when the search was initiated.

As we understand the opinion, the Court of Criminal Appeals distinguishes **Harris** and **Abel**, saying that in **Harris** and **Abel** there was a valid search warrant and here there was no warrant. We see no reason to make this distinction between a search with a warrant and a warrantless search. If the search was **lawful**, whether with or without a warrant, then the **Harris** and **Abel** rule would apply.

We recognize that every search of an automobile may not be valid, and we will not attempt to spell out in specific detail the many facets of the exclusionary rule of evidence under the Fourth Amendment which has anchored itself in our jurisprudence, because the rules which determine what is and is not permissible under the Fourth Amendment are far from exact and some of the decisions of the Supreme Court of the United States seem to conflict. But as we understand the principles which are applicable in fact situations similar to those present here, we conclude that the evidence obtained in this case was not inadmissible because of the method of its seizure. See **United States v. LaVallee** (2nd Cir., 1966), 367 F. 2d 351. The judgment of the Court of Criminal Appeals is due to be reversed and the cause remanded to that Court.

REVERSED AND REMANDED

Jones, Justice (Concurring specially).

I agree with the majority in holding that the fruits of the warrantless search of the car made at the station house are admissible to prove a different and independent crime where such search and seizure is conducted with probable cause. I do not wish to be understood as agreeing that probable cause sufficient to support a warrantless search exists under the facts of this case. I feel that the otherwise mysterious absence of arrest of the accused, as well as the invalid search warrant, is explained by the lack of probable cause. In this respect I agree with the specially concurring opinion of Presiding Judge Cates. However, the limited review by this Court of the Court of Criminal Appeals constrains me to accept the finding of that Court that there was probable cause in this case.

APPENDIX "B"

Alabama Supreme Court Order Remanding Case to Court of Criminal Appeals

February 8, 1973

The State of Alabama—Judicial Department

In the Supreme Court of Alabama

October Term 1972-73

SC 146

Ex Parte: State of Alabama, ex rel. Attorney General

Petition for Writ of Certiorari to the Court of Criminal Appeals

(Re: McArthur Bassett v. State of Alabama)

Whereas on November 9, 1972, a Writ of Certiorari to the Court of Criminal Appeals was granted in this Court and the cause was set down for submission pursuant to Supreme Court Rule 39.

Whereupon, come the parties and the cause being submitted on briefs and duly examined and understood by the Court, it is considered that in the proceedings of the Court of Criminal Appeals there is manifest error.

It Is, Therefore, Ordered and Adjudged that the judgment of the Court of Criminal Appeals be reversed and annulled, and that the cause be remanded to the Court of Criminal Appeals for further proceedings in accordance with the opinion this day rendered by the Supreme Court, with the costs of this proceeding taxed against the respondent, McArthur Bassett, for which costs let execution issue.

APPENDIX "C"

Opinion of Alabama Court of Criminal Appeals

The State of Alabama—Judicial Department

The Alabama Court of Criminal Appeals

October Term, 1971-72

4 Div. 102

McArthur Bassett

v.

State

Appeal From Coffee Circuit Court

Tyson, Judge

The indictment charges the appellant with possessing or transporting marijuana, and also possessing or transporting lysergic acid diethylaminde (LSD-25), contrary to the law. Verdict and judgment of guilty were entered for possessing or transporting lysergic acid diethylaminde, which resulted in a sentence of eight years in the penitentiary.

On the night of July 16, 1970, Officers Baxter and Doty of the Enterprise Police Department were on duty patrolling the streets of the city in their police cruiser. About 11:00 p.m., they received an alert over their police band radio that an armed robbery had occurred in nearby Dothan, Alabama. This radio report alerted them to a description of the robbery suspects.

Subsequent to this alert, in the early morning hours, the two officers spotted two men who appeared to fit the descriptions of the robbery suspects, one of whom was the appellant, at the Cannon Oil Station in Enterprise, Alabama. At that time the appellant was standing outside his car in what was described as a well-lighted area.

When appellant and his companion left the gas station, they were followed by the two officers in their patrol car. At this time Officer Baxter called in the tag number and a description of the car to the police station.

After travelling a short distance in the direction opposite Dothan, Officer Baxter signaled by a blinking blue light for them to stop. Officer Baxter approached appellant's car and asked to see his driver's license, after which he asked appellant to get out of the car. At that time, while the other occupant remained in the car, Officer Baxter made a search of the driver's side of the vehicle, the console between the bucket seats, and the glove compartment.

During this search, Officer Baxter observed in the console a plastic bag containing a substance which he suspected as being marijuana. The officer also observed a plastic bag containing small yellow tablets. At the officer's request, the appellant opened the trunk, the officer shined a flashlight therein, and luggage was observed. The officers noted that the appellant had quite a bit of money on his person. No seizure was made at this time.

The appellant and the other suspect consented to be and were thereafter taken to the police station in Officer Baxter's car. At the same time, Lieutenant McDaniel, who had arrived on the scene shortly after the appellant was stopped, drove appellant's automobile to the parking lot at the police station.

Upon arrival at the station, the appellant and his companion were placed in a cell, at their request, in order to get some rest. No charges were filed against the two men at this time. At around 3:00 a.m., Officer Baxter, another policeman, and a State narcotics agent searched appellant's car under the auspices of what the State concedes was a defective search warrant.[1] The search revealed il-

[1] Neither the warrant nor any of the details pertaining to it appear in the record.

legally possessed marijuana and LSD, some of each being taken from the console and some from the trunk of the vehicle.

Sometime after the search, the robbery victim arrived from Dothan and stated that the appellant and his companion were not the robbers. It was subsequent to these events that the appellant was placed under arrest for transporting and possessing the drugs in question.

Before his arraignment, appellant filed motions to suppress the evidence and to quash the indictment. There was a full hearing on the motion to suppress, resulting in its denial. The motion to quash the indictment was also denied. Appellant was subsequently tried and convicted; hence this appeal.

The principal question in this case involves the admissibility of evidence seized from the appellant's automobile.

Appellant argues that the search of his car on the street and the subsequent search and seizure of various illegally possessed drugs from his automobile at the police station were illegal, thus rendering such drugs inadmissible into evidence at the trial.

The evidence clearly established that a "search" was made of appellant's car when initially stopped on the street in Enterprise. However, there was absolutely no evidence to indicate that a "seizure" was made at that time. Consequently, appellant's motions to suppress the evidence and quash the indictment, when directed to this initial search, were properly denied.

We next turn our attention to the search of appellant's car made at the police station. It is the fruits of this search which form the basis of appellant's conviction. The State concedes that the search was made without a valid search warrant, but asserts that it was not in violation of the appellant's Fourth Amendment rights because it was made with probable cause.

We believe that probable cause existed for both searches. In relation to the initial search of appellant's car on the street, the case of **Dyke v. Taylor Implement Manufacturing Co.**, 391 U. S. 216, 88 S. Ct. 1472, 20 L. Ed. 2d 538, is in point. There, the court stated that a warrantless search of an automobile may be made where "officers have reasonable or probable cause to believe that they will find the instrumentality of a crime or evidence pertaining to a crime."

The police officers who initially stopped and searched the appellant's car were acting on the basis of information transmitted to them on their police radio that an armed robbery had occurred in the nearby city of Dothan, Alabama. It was the testimony of the two officers that the suspects were described to them as two white males of medium build; that one was described as "just over six foot" and having "long sideburns, dark colored hair and not bushy"; that the other suspect was described as being short, approximately five feet eight inches to five feet ten inches, and having "sandy colored hair bushy; no distinctive hair style, beard and mustache"; that one suspect was reportedly wearing dark work clothes, and the other light colored clothing; and that the mode of transportation was unknown.

The two officers testified that the appellant and his companion, when spotted at the Cannon Gas Station in Enterprise, closely fit the description given in the radio report of the robbery. Officer Baxter testified at trial as follows:

"Q. Now, where was this defendant when you first saw him?

"A. He was right under the lights at the gas station.

"Q. Was he inside the automobile or outside?

"A. No, sir, he was standing outside.

"Q. Was there anyone with him?

"A. Yes, sir.

"Q. What was the general appearance of this defendant at that time with regard to his build, his height, the condition of his hair and or beard, and so forth?

"A. Very closely resembled from message we had received on the radio.

"Mr. Rowe: We object to that, to the message received on the radio.

"The Court: I sustain the similarity.

"Mr. Rowe: And I move to exclude that from the jury.

"The Court: Yes, that is excluded, gentlemen.

"Q. (Mr. Stephens continuing) Just tell what you saw there.

"Well, the subject there had sandy hair bushy, no distinctive hair style, a beard, and a mustache. And he dressed—well, he had on the same clothes that were given out in the report.

"Q. Same type clothing?

"A. Same type work clothes.

"Q. Was there anyone with this defendant?

"A. There was an occupant in the car on the passenger side.

"Q. What did he look like?

"A. Well, I couldn't tell right then exactly, but when we stopped him he was tall, had dark hair, long sideburns as the same description given on the radio report."

Baxter also testified that when he first observed the appellant in Enterprise, "We figured he had had just about enough time to get to Enterprise." Also, the fact that the vehicle driven by appellant was headed in the direction away from Dothan, the robbery site, reinforced the officers' suspicion that had already begun to focus on the appellant and his passenger. This was also supported by the luggage in the trunk and the large sum of money on the appellant's person.

At the trial, Officer Baxter was asked to read a copy of the alert which he received over his police radio on the night of the robbery. It read as follows:

> "A. Ten-fifty p.m., 16 July 1970. Robbery of Texaco Station in Dothan, $100.00 taken, two white males: Six foot, blond hair, long sideburns, goatee, light colored clothes. Number two, five foot eight to five foot ten, black hair, green and white hunting cap, camouflage-type, with dark colored work clothes. Called each other William and Terry, pulled the phone out of the wall, kept talking about a white Chevy, left on foot running toward the parking at Northside Mall. Investigation being handled by Dothan P.D."

Sergeant Charles Heath of the Enterprise Police Department testified that he received a "flash" of the robbery in question during the night of July 16, 1970, and was responsible for broadcasting the information about the robbery over the police band radio. In his testimony, he corroborated Officers Baxter's and Doty's testimony that the appellant and his companion fit the descriptions of the robbery suspects, as follows:

> "Q. When you first saw this defendant there at the police station he matched that general description, did he not, except possibly for the height?
>
> "A. Yes, sir, just a little bit in height I would say, sir.
>
> "Q. All right, sir. Did the other subject fit the description as to the hair other than the clothing he had?
>
> "A. He would have been just a little bit tall.
>
> "Q. He was a little taller?
>
> "A. Yes, sir.
>
> "Q. But as far as the hair, it was dark?
>
> "A. That is correct?"

In **Carroll v. United States**, 267 U. S. 132, 45 S. Ct. 280, 69 L. Ed. 543, the Supreme Court stated:

"'The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law.'

"'The measure of legality of such a seizure is, therefore, that the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes had contraband * * *'"

In **Brinegar v. United States**, 338 U. S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879, the court stated that:

"'In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.

"'"The substance of all the definitions" of probable cause "is a reasonable ground for belief of guilt." McCarthy v. DeArmit, 99 Pa. 63, 69, quoted with approval in the Carrol opinion. 267 U. S. at page 161, 45 S. Ct. at page 288, 69 L. Ed. 543, 39 A.L.R. 790. And this "means less than evidence which would justify condemnation" or conviction * * *'"

Based on all of these factors, we believe that the officers had problable cause to believe that appellant's automobile contained the fruits of a crime; namely, the Dothan robbery.

Given the probable cause which existed at this time, we do not believe that the subsequent search at the police station constituted a Fourth Amendment violation. We find the case of **Chambers v. Maroney**, 399 U. S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419, to be dispositive of this question.

That was a case involving armed robbery where the police were given a description of the robbers' car and the clothing worn by two of the four men seen in the car. After stopping such a car which contained occupants who met the descriptions given, the four men were arrested and the car was taken to the police station. The police there conducted a warrantless search of the car which revealed the property stolen in the robberies. In affirming that conviction, the Supreme Court thereby extended the rule of permissible search to a warrantless search based on probable cause of an automobile which, having been stopped originally on a highway, is parked outside a police station.

As was stated in **Chambers**, supra:

> "On the facts before us, the blue station wagon could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search. The probable-cause factor still obtained at the station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured. In that event there is little to choose in terms of practical consequences between an immediate search without a warrant and the car's immobilization until a warrant is obtained. . . ."

Thus, we find that the probable cause to search appellant's vehicle which existed on the street in Enterprise still existed at the police station, as to the fruits of the Dothan robbery.

II

We then come to this question: Where officers have probable cause to conduct a warrantless search not incident to an arrest, may property relating to an entirely different offense be seized, where possession of that property alone constitutes a crime? In **Marron v. United States**,

275 U. S. 192, 48 S. Ct. 74, 72 L. Ed. 231, the Supreme Court stated:

> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."

However, in **Harris v. United States**, 331 U. S. 145, 67 S. Ct. 1098, 91 L. Ed. 1399, the Court formulated an exception to the strict language of **Marron**. From **Harris**, the following:

> ". . . If entry upon the premises be authorized and the search which follows be valid, there is nothing in the Fourth Amendment which inhibits the seizure by law-enforcement agents of government property the possession of which is a crime, even though the officers are not aware that such property is on the premises when the search is initiated."

Again, in **Abel v. United States**, 362 U.S. 217, 80 S. Ct. 683, 4 L. Ed. 2d 668, the Supreme Court spoke directly to this point when it said:

> ". . . When an article subject to lawful seizure properly comes into an officer's possession in the course of a lawful search it would be entirely without reason to say that he must return it because it was not one of the things it was his business to look for. . . ."

Although the opinions in **Harris** and **Abel** contain the statement that a policeman may seize any articles subject to lawful seizure which turn up in the course of a lawful search, such was not said about a warrantless search not incident to an arrest. Rather, in **Harris** and **Abel**, articles were seized from suspects incidental to lawful arrest.

In **Aron v. United States,** 382 F. 2d 965 (8 Cir. 1967), and **United States v. Eisner,** 297 F. 2d 595 (6 Cir. 1962), federal appeals courts went one step further and held that, even where no arrest has been made, officers searching under a valid search warrant may seize property not described in the warrant and relating to a different offense where possession alone of that property constitutes a crime.

These two exceptions to the **Marron** doctrine have been recognized by most courts to be the narrow scope of the exception to **Marron** which was formulated in **Harris,** and as indicated in **Seymour v. United States,** 369 F. 2d 825 (10 Cir. 1966), cert. denied 386 U. S. 987, 87 S. Ct. 1297, 18 L. Ed. 239, wherein the court stated:

> ". . . [N]otwithstanding the specificity of the constitutional prohibition, the courts have apparently recognized a narrow exception dictated by the practicalities of a particular situation as where in the course of a lawful search *pursuant to a lawful arrest or the execution of a valid search warrant* the officer uncovers evidence of another crime. In these circumstances the officer is not required to close his eyes to the realities of the situation. He may seize the fruits or the instruments of the crime or even that which is presumptively contraband." (Italics added.)

In the instant case, and as previously noted, the search and seizure which led to appellant's conviction was made **prior** to his arrest and **not** under the auspices of a valid search warrant. In fact, such search was under an admittedly defective warrant. It therefore cannot be successfully contended that the **Harris** exception, or the **Aron** and **Eisner** extensions of this are applicable to the case at bar.

We are, therefore, of the opinion that since both suspects had been placed in jail and their automobile placed on the county parking lot, there could be no question that they

would flee with the vehicle. See **Preston v. United States**, 376 U. S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777. We hold that the officers should have gone before a magistrate and obtained a valid search warrant before their seizure of the items in the appellant's vehicle, other than those involving the Dothan robbery, could be deemed lawful.

In view of this, we are of the opinion that the appellant's motion to suppress the State's evidence should have been granted.

In light of these determinations, we pretermit consideration of the other claims of error as herein urged by the appellant.

For the foregoing reasons, this judgment of conviction is due to be reversed and the cause be remanded.

Reversed and Remanded.

Harris, J., concurs; Cates, P. J., concurs specially as per opinion; Almon, J., concurs in the result.

Cates, P. J., concurring specially.

I would reverse under **Whiteley v. Warden of Wyoming Penitentiary**, 401 U.S. 560, wherein the court said:

> "* * * In support of this proposition, the State argues that a reviewing court should employ less stringent standards for reviewing a police officer's assessment of probable cause as a prelude to a warrantless arrest than the court would employ in reviewing a magistrate's assessment as a prelude to issuing an arrest or search warant. That proposition has been consistently rejected by this Court. **United States v. Ventresca**, 380 U.S. 102, 105-109 (1965); **Aquilar v. Texas**, 378 U. S. 108, 110-111 (1964); **Jones v. United States**, 362 U. S. 257, 270-271 (1960). And the reason for its rejection is both fundamental and obvious: less stringent standards for reviewing the

officer's discretion in effecting a warrantless arrest and search would discourage resort to the procedures for obtaining a warrant. Thus the standards applicable to the factual basis supporting the officer's probable cause assessment at the time of the challenged arrest and search are at least as stringent as the standards applied with respect to the magistrate's assessment. See **McCray v. Illinois**, 386 U. S. 300, 304-305 (1967)."

—401 U. S. 566

On Rehearing

We have carefully considered the application for rehearing and deem that it should be overruled, and in further support of the views expressed in our original opinion, in part II thereof, we also wish to cite **Coolidge v. New Hampshire**, 403 U. S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564.

Application overruled.

Cates, P. J., Harris and DeCarlo, J. J., concur.

Almon, J., dissenting from the overruling of the application for rehearing.

After further consideration of this cause, I would grant the application for rehearing and affirm the judgment of conviction on authority of **Chambers v. Maroney**, 399 U. S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419.

APPENDIX "D"

Entry of Judgment by Alabama Court of Criminal Appeals

March 20, 1973

State of Alabama — Judicial Department

Court of Criminal Appeals

4th Div. 102

McArthur Bassett

vs.

State of Alabama

Appeal from Coffee Circuit Court

(JUDGMENT AFTER REMANDMENT BY THE SUPREME COURT OF ALABAMA)

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant, and sureties on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

BRIEF FOR THE RESPONDENTS IN OPPOSITION

FILE COPY

JUL 18 19
MICHAEL ROCAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1711

McARTHUR BASSETT,

Petitioner

versus

STATE OF ALABAMA,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR RESPONDENT IN OPPOSITION

WILLIAM J. BAXLEY
Attorney General of Alabama

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS OF THE COURT BELOW

The opinion of the Court of Criminal Appeals of Alabama was rendered August 15, 1972, and is reported at 275 So. 2d 713, and is also reproduced in Appendix C to the instant Petition. The opinion of the Alabama Supreme Court was rendered on February 8, 1973, and is reported at 275 So. 2d 720 and is also reproduced in Appendix A to the instant Petition.

JURISDICTION

The Petitioner has applied to this Honorable Court for a Writ of Certiorari to review the judgment of the Alabama

Supreme Court rendered on February 8, 1973, which reversed the decision previously rendered by the Alabama Court of Criminal Appeals on August 15, 1972. As a result of the Alabama Supreme Court's decision, the Alabama Court of Criminal Appeals entered an order on March 20, 1973, affirming the conviction of McArthur Bassett.

Petitioner applied for this Writ of Certiorari under the provisions of Title 28, Section 1257(3), United States Code.

QUESTION PRESENTED

Where officers have probable cause to conduct a warrantless search, may property relating to an entirely different offense be seized, where possession of that property alone constitutes a crime?

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

On November 9, 1970, McArthur Bassett was convicted in the Coffee County Circuit Court of possession of Lysergic Acid Diethylamide (LSD-25). On appeal, the Alabama Court of Criminal Appeals reversed the judgment of the trial court, holding that even though there was probable cause to search, the evidence seized was not admissible because it was not what the officers expected to find. The Alabama Supreme Court granted certiorari and reversed the decision of the

Alabama Court of Criminal Appeals and remanded it where the conviction was affirmed. Bassett then filed the instant Petition. The facts are adequately set out in the opinions below which are reproduced as Appendices to Bassett's Petition.

ARGUMENT

Petitioner Bassett seeks to have this Honorable Court reverse the Supreme Court of Alabama and hold that police officers having probable cause to conduct a warrantless search could not seize property the possession of which constituted an offense unrelated to the offense for which probable cause existed. Petitioner contends that *Coolidge v. New Hampshire*, 403 U. S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971), requires that rather untenable conclusion in the case at bar even though *Chambers v. Maroney*, 399 U. S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419 (1970), is clearly applicable. Bassett argues that there were no "exigent circumstances" present justifying a warrantless search of Petitioner's automobile.

Opinion of Alabama Supreme Court correct

Despite Petitioner's insistence to the contrary, the decision below is correct. It was noted in that opinion that the facts sub judice are very similar to the factual situation presented to this Honorable Court in *Chambers v. Maroney*, *supra*. In *Chambers* this Court held that there was no violation of an accused's Fourth Amendment rights for police officers to make a warrantless search of an automobile taken to a police station after the accused and others had been arrested while riding in the automobile where: (1) there was probable cause to arrest the occupants of the

automobile for armed robbery and to search the automobile for guns and stolen money; (2) an immediate search of the automobile at the time and place of the arrest would have been constitutionally permissible; and (3) it was not unreasonable to take the automobile to the police station before making the search and probable cause for the search still existed after the automobile was taken to the police station.

Here both the Alabama Court of Criminal Appeals and the Alabama Supreme Court found that probable cause to search existed both at the time the automobile was stopped on the street and later at the police station. Therefore, the conclusion that the search and seizure of the contraband was constitutionally permissible is inescapable.

Coolidge does not require reversal

Petitioner insists that *Coolidge v. New Hampshire*, 403 U. S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971), requires that evidence seized during a warrantless search is not admissible unless there are "exigent circumstances." However, this Court again acknowledged in *Coolidge, supra*, at 29 L. Ed. 2d at 579, that " 'exigent circumstances' justify the warrantless search of 'an automobile stopped on the highway,' where there is probable cause. . . ."

The facts giving rise to the Court's decision in *Coolidge, supra*, are vastly different from those in the case at bar. In that case, the police had known for some time of the automobile in question and of its probable role in the crime. Moreover, *they had planned in advance to seize it!* In the instant case, there was *no planned seizure* as there was in *Coolidge, supra*. The situation presented to Officers Bax-

ter and Doty was precisely the same as that which confronted the police in *Chambers, supra.*

As in *Chambers* the automobile could have been searched on the spot when it was stopped, since there was probable cause to search and it was a fleeting target for search. Also, in both that case and the instant case, the probable cause factor and the mobility of the vehicle still obtained at the station house. Petitioner's argument implies that the car should have been held until a valid warrant was obtained before it was searched. Addressing this alternative in *Chambers, supra,* Mr. Justice White wrote:

> "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment."

That probable cause to search the car existed both on the street and a short time later at the police station is not questioned here. Thus, the evidence discovered was admissible against Bassett. It is emphasized that the officers made a diligent good faith effort to obtain a valid search warrant prior to their thorough search of Petitioner's automobile even though it was after midnight. There is no claim that the police intentionally bypassed procedures designed to safeguard individual constitutional rights.

Appellant arrested prior to search and seizzure

It is noted in the opinion rendered herein by the Alabama Court of Criminal Appeals that had there been a law-

ful arrest prior to the officer's search of Petitioner's car, the narcotics would have been properly admitted. It was further frequently acknowledged that probable cause existed both at the time the car was stopped by the police and at the time it was searched at the station house. However, it is stated in that opinion that the search and seizure leading to Bassett's conviction was made *prior* to his arrest.

As argued by the State below, the facts clearly show that the contrary is true, i.e., Petitioner was arrested *prior* to any seizure of evidence. It is fundamental that an arrest takes place at the moment that an individual is restrained and comes under the control of the officers. When Officers Doty and Baxter detained Bassett and his companion and restricted their liberty of movement, the arrest was complete. *Henry v. U. S.*, 361 U. S. 98, 80 S. Ct. 168, 4 L. Ed. 2d 134. The *Henry* case is very similar in many respects to the case at bar; however, it was reversed because the Police did not have probable cause at the time of the arrest. This fatal defect is not contained in the instant case. Thus, those provisions quoted by the Alabama Court of Criminal Appeals from *Harris v. U. S.*, 331 U. S. 145, 67 S. Ct. 1098, 91 L. Ed. 1399, *Abel v. U. S.*, 362 U. S. 217 80 S. Ct. 683, 4 L. Ed. 2d 668, and *Seymour v. U. S.*, 369 F. 2d 825 (10 Cir. 1966) are applicable to the search and seizure in this case.

Seizure of article in plain view proper after valid entry

Another rationale which authorizes seizures such as that involved herein is the plain view theory. Objects falling in plain view of an officer who has a right to be in the position to view such objects are subject to seizure and may be introduced into evidence. *Coolidge v. New Hampshire*, 403 U. S.

443, 91 S. Ct. 2022, 29 L. Ed. 2d 564, 582-584 (1971); *United States v. Davis*, 423 F. 2d 974 (5th Cir., 1970).

The Court of Criminal Appeals of Alabama admits in its opinion that probable cause existed to search the automobile both on the street and at the police station. Thus, the initial intrusion based on probable cause gave the officers the right to observe the contraband and to seize it without a search warrant.

Appellant Consented To The Search

It is well-settled that a search conducted pursuant to consent is an exception to the requirement of a warrant and is constitutionally permissible. *Davis v. United States*, 328 U. S. 582, 66 S. Ct. 1256, 90 L. Ed. 1453 (1946); *Zap v. United States*, 328 U. S. 624, 66 S. Ct. 1277, 90 L. Ed. 1477 (1946). The only question which then arises under the Fourth and Fourteenth Amendments concerns the voluntariness of the "consent."

It is respectfully submitted that in the instant case Bassett voluntarily consented to the search. That the consent was not actually submission to any express or implied assertion of authority is borne out by his agreeing to open the trunk of his car at Officer Baxter's request. In fact, Petitioner argues that he voluntarily accompanied officers to the police station and even requested a cell so that he could get some rest.

A case bearing a striking resemblance to the one at bar is *Schneckloth v. Bustamonte*, ——— U. S. ———, 93 S. Ct. ———, 36 L. Ed. 2d 854, decided by this Honorable Court on May 29, 1973. In that case, consent was determined to

have been voluntarily given when an occupant of a car stopped by the police not only allowed them to search said car but also assisted in the search by opening the trunk as in the case sub judice.

Thus, though a warrant had been obtained and probable cause existed, as noted by the lower courts, an exception to the requirement of both or either of these was present. Therefore, the fruits of this search are constitutionally admissible under the consent theory as well as the other theories noted.

CONCLUSION

Respondent strenuously maintains that: (1) the opinion of the Alabama Supreme Court is correct; (2) that the contraband is clearly admissible under *Chambers v. Maroney;* (3) that the drugs are also admissible under the plain view theory; and (4) that Bassett consented to the search. Any of these theories provide legal justification for the seizure and introduction of the drugs into evidence. Thus, the conclusion is unavoidable that the search and seizure in the instant case is not *unreasonable* in the Constitutional sense.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard F. Calhoun, one of the Attorneys for Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 16th day of July, 1973, I served the requisite number of copies of the foregoing Brief for Respondent In Opposition upon Honorable Richard S. Manly, P.O. Drawer U, Demopolis, Alabama 36732, and Honorable T. W. Thagard, Jr., 600 Bell Building,

Montgomery, Alabama 36104, Attorneys for Petitioner, by depositing the same in the United States mail, first class postage prepaid, properly addressed to him at the address given.

Richard F Calhoun

RICHARD F. CALHOUN
Assistant Attorney General
of Alabama